

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

CHEREE BOLING,
Plaintiff,

v.

**Civil Action No. 1:08-CV-112
(Judge Keeley)**

**MICHAEL J. ASTRUE, COMMISSIONER OF
SOCIAL SECURITY,**
Defendant.

REPORT AND RECOMMENDATION/OPINION

Plaintiff filed a Complaint in this Court on May 2, 2008. Defendant filed his Answer on July 1, 2008. Plaintiff filed her Motion for Summary Judgment on August 20, 2008, and Defendant filed his Motion for Summary Judgment on September 18, 2008. On April 27, 2009, the undersigned United States Magistrate Judge entered a Report and Recommendation recommending to the District Court that Plaintiff's Motion for Summary Judgment be granted by reversing the Commissioner's decision with a remand of the cause to the Secretary. No objections were filed. On May 14, 2009, District Judge Irene M. Keeley entered an Order adopting the Report and Recommendation. On July 15, 2009, Plaintiff filed "Plaintiff's Motion for Approval of Fees and Expenses Under the Equal Access to Justice Act" requesting fees in the amount of \$4,117.50 [Docket Entry 21].

Defendant did not file any objection to Plaintiff's motion. Instead, on August 5, 2009, the parties filed a joint Stipulation withdrawing the previously filed Equal Access to Justice Act petition and further stipulating that Plaintiff's counsel, Montie VanNostrand, be awarded attorney fees under the EAJA in the amount of Three Thousand One Hundred and Seventy-Seven Dollars and Fifty Cents (\$3,177.50). The parties jointly stated that the stipulation constitutes a compromise settlement of Plaintiff's request for EAJA attorney fees, and does not constitute an admission of liability on the part of Defendant under the EAJA. Further, payment of the aforementioned EAJA attorney fees shall constitute a complete release from and bar to any and all claims Plaintiff may have relating to

EAJA fees in connection with this action. Any payment shall be made payable to Plaintiff's counsel as Plaintiff's assignee and delivered to the business address of Plaintiff's counsel.

RECOMMENDATION

Upon consideration of all which, the undersigned United States Magistrate Judge respectfully **RECOMMENDS** the Court approve the withdrawal of Plaintiff's previously filed "Motion for Approval of Fees and Expenses under the Equal Access to Justice Act" and order that Defendant pay Montie VanNostrand, Esquire, attorney fees, pursuant to the Equal Access to Justice Act, 28 U.S.C. section 2412 in the amount of Three Thousand One Hundred and Seventy-Seven Dollars and Fifty Cents (\$3, 177.50).

Any party may, within ten (10) days after being served with a copy of this Report and Recommendation, file with the Clerk of the Court written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. A copy of such objections should also be submitted to the Honorable Irene M. Keeley, United States District Judge. Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

The Clerk of the Court is directed to send a copy of this Report and Recommendation to counsel of record.

Respectfully submitted this 2nd day of September, 2009.

John S. Kaull

JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE